

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 210 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

DALAJI AMARSHI VAGHRI

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Appearance:

MR ST MEHTA, APP, for the appellant.

MR CM KELLA for the Respondents.

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CORAM : MR.JUSTICE J.M.PANCHAL and  
MR.JUSTICE M.H.KADRI  
Date of decision: 20/12/96

ORAL JUDGMENT (per Kadri, J.)

The State of Gujarat has filed this appeal under section 378 of the Code of Criminal Procedure, 1973 challenging the judgement and order dated November 30,

1984 passed by the learned Sessions Judge, Kuchchh, at Bhuj in Sessions Case No. 1/84, whereby the respondents are acquitted of the offence punishable under section 302 read with section 34 of IPC and section 135 (1) of the Bombay Police Act.

2. In short, the prosecution case is as under :

Informant Natha Megha was the resident of village Lakadia. He had one daughter, named Vejibai and four sons. Eldest son was Khimji (to be referred to as 'the deceased'). Daughter of informant Natha Megha viz. Vejibai was married with one Parshottam. Vejibai was treated with cruelty and therefore, she was staying at the house of the informant. The husband of Vejibai had initiated divorce proceedings and obtained a decree of divorce from the District Court, at Bhuj. It is the prosecution case that, as the respondents were relatives of the husband of Vejibai, they had a grudge against the family of the informant. On 19/09/1983, Khimji who is the son of the informant was proceeding in the direction of Ashapuri Mataji's temple. On his way, when he came near the house of the respondent No.1, he was assaulted by all the respondents who were armed with deadly weapons like axe and sticks. Due to the assault, Khimji fell down and many persons gathered near him. The informant had also arrived where Khimji was lying. Injured Khimji was removed to Primary Health Centre, Lakadia and thereafter, he was removed to Anjar Hospital. As the condition of Khimji became precarious, he was removed to Bhuj Hospital. At Bhuj Hospital, during treatment, Khimji was declared dead. The informant lodged FIR at Bhuj Police Station. The offence had taken place in the jurisdiction of Aghoi police station, but as the PSI of Aghoi police station was on leave, the investigation was handed over to the PSI - Mr Kureshi of Bhachau police station, who held the inquest on the dead body of Khimji and sent it for post mortem. Dr. Momaya of Bhuj Hospital performed autopsy of the dead body. PSI Kureshi thereafter visited the scene of offence and collected blood stained earth and panchnama of the scene of offence was also drawn. Statements of informant, Savji Kheta, Manji Kheta and other witnesses were recorded. Respondents No.1 and 2 were arrested on 22/09/1983 around 12.00 noon. Accused No.1 and 2 had shown their willingness to produce the weapons which were used in commission of the crime and therefore, vide discovery panchnama, axe and sticks were recovered in the presence of panchas. Respondent No.3 was arrested and he had also produced the incriminating articles used in commission of the offence. Thereafter, accused No.4 was arrested. The

incriminating articles were sent to Forensic Science Laboratory, at Junagadh for analysis. Thereafter, PSI Dodiya of Aghoi police station had reported on duty and therefore, he was entrusted with the investigation. PSI - Dodiya after collecting the report of FSL and on completion of the investigation, filed chargesheet against the respondents for offence under section 302 read with section 34 of the IPC and u/s 135 (1) of the Bombay Police Act in the Court of the learned Judicial Magistrate First Class, at Bhachau. As the offence u/s 302 is exclusively triable by the Court of Sessions the learned JMFC committed the case to the Sessions Court, at Bhuj which was numbered as Sessions Case No. 1/84.

3. Charge exh.1 was framed against the respondents. under sections 302, 302 read with 34, 201 I.P.Code as well as section 135 of Bombay Police Act. The charge was read over and explained to the respondents to which they pleaded not guilty and claimed to be tried.

4. The prosecution in order to bring home the charge against the respondents, examined the following witnesses:

P.W. No. Exh. Name of Witness

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1 8 Jayantilal Vajeshanker - Circle  
Inspector,  
2 10 Natha Megha, Informant  
3 11 Savji Khetabhai,  
4 12 Monghibai Laghabhai  
5 13 Laxmibai Vajabhai,  
6 14 Amrutbai Khimji Natha,  
7 15 Vejibai Nathabhai,  
8 17 Shaku Punja,  
9 18 Bhanji Meghji,  
10 19 Ramniklal Jethalal,  
11 22 Swarupsing Madarsingh,  
12 34 Dr.Somchand Kanji Momaya,  
13 36 Himatsinh Premsinh,  
14 44 Dr.Dolarrai Trikamrai Vaghela,  
15 46 Bastiram Khemram,  
16 47 Pravinsinh Jilubha,  
17 49 Kalukhan Alamkhan Kureshi,  
18 54 PSI V.L.Dodia

The prosecution also produced documentary evidence consisting of FIR, Inquest Panchnama, Postmortem Notes, Arrest panchnama of the accused, discovery panchnama, Report of FSL etc.

5. After recording of the prosecution evidence was over, the learned Sessions Judge questioned the respondents generally on the incriminating evidence appearing against them on the record of the case and their statements came to be recorded under S. 313 of the Code of Criminal Procedure. The defence of the respondents was of denial and they stated that they were falsely involved in the case.

6. After appreciating the oral as well as documentary evidence led by the prosecution and after hearing the arguments of the learned advocates appearing for both the sides, the learned Sessions Judge recorded the following conclusions :

- (i) that deceased Khimji Natha died a homicidal death;
- (ii) There were contradictions in the FIR and the oral testimony of the informant Natha Megha;
- (iii) There were exaggerations in the oral testimony of the informant as he tried to pose as an eye-witness before the court whereas in the FIR he had not claimed to have witnessed the incident;
- (iv) Oral testimony of Vejibai was full of contradictions and she was not an eye-witness to the incident;
- (v) Other alleged eye-witnesses have turned hostile to the prosecution;
- (vi) Discovery panchnamas prepared under S. 27 of the Indian Evidence Act are not reliable and they do not connect the accused persons with the weapons discovered ;
- (vii) Prosecution has not led evidence to prove that the respondents had common intention to commit murder of Khimji Natha,
- (viii) Prosecution has failed to lead cogent and reliable evidence that the respondents had tried to destroy evidence against them;
- (ix) The FIR was lodged after due deliberation and at the earliest point of time the names of the respondents were not disclosed as the assailants.

7. On the above referred to conclusions arrived at by the learned Sessions Judge, he acquitted the respondents for offence with which they were charged, giving rise to the filing of this appeal by State of Gujarat.

8. Learned Addl. P.P. Mr ST Mehta has taken us through the entire evidence on the record of the appeal. It is submitted that the evidence of Vejibai and the informant Natha Megha implicates the respondents as the assailants, who have caused murder of Khimji Natha on 19.9.1983. The learned Counsel further submitted that the discovery panchnamas also connect the respondents as the assailants who have caused injuries by means of deadly weapons to Khimji Natha. It is also submitted by the learned Counsel for the State that because of the divorce proceedings which had taken place between Vejibai, daughter of the informant and her husband, who is the relative of the respondents, the respondents had a motive to commit murder of Khimji Natha and therefore, the appeal should be allowed.

9. On the other hand, the learned Counsel for the respondents has contended that the learned Sessions Judge has given cogent and convincing reasons for acquitting the respondents of the offences for which they were charged. It is further contended that the evidence of informant Natha Megha and Vejibai do not inspire confidence and therefore, their evidence was rightly rejected by the learned Sessions Judge. The learned Counsel for the respondents further submitted that the discovery panchnamas were drawn contrary to the provision of S. 27 of the Evidence Act, and therefore, the appeal should be dismissed.

10. We have gone through the entire evidence on record. The fact that deceased Khimji Natha died a homicidal death is not in dispute and therefore, the finding of the learned Sessions Judge that Khimji Natha died a homicidal death is eminently just and proper and the same is hereby confirmed.

11. Submission of the learned APP that the evidence of PW 2 Natha Megha ought to have been relied on by the learned Sessions Judge is devoid of any merits. It is pertinent to note that in the FIR the informant had not posed himself as an eye-witness, whereas in his oral testimony before the court he deposed that after hearing shouts of his son Khimji, he came running to the place of incident and saw that accused no. 1 and 2 were armed with deadly weapons and accused no.4 was also present.

In cross-examination, the witness was confronted with the FIR in which he had not stated that he had seen accused persons armed with deadly weapons and they were inflicting injuries on the body of deceased Khimji Natha, and thereupon he admitted that he had not so stated in his FIR. Thus, the learned Judge is justified in rejecting the oral testimony of the informant. The submission of the Learned APP that the learned Sessions Judge ought to have placed reliance on the evidence of Vejibai, who is the daughter of the informant and who had obtained divorce from her husband Parshottam, is also devoid of any merit. The evidence of Vejibai does not inspire any confidence as there are many contradictions in her oral testimony. The incident in question had taken place after 3 years of the divorce obtained by Vejibai. During this period of 3 years, no untoward incident had taken place and therefore, there is no reason for the respondents to commit murder of deceased Khimji. The learned Sessions Judge has given cogent and convincing reasons for not placing reliance on the evidence of Vejibai and we do not find any reason to disturb that finding.

12. Prosecution has also examined Amrutbai, PW 6 who is the widow of deceased Khimji Natha. She has also not supported the prosecution version that she had witnessed the incident in question. When the widow of the deceased does not support the prosecution case, the respondents cannot be held guilty for causing the murder of deceased Khimji Natha. Prosecution has examined other eye-witnesses, but they have turned hostile and have not supported the prosecution case that the respondents were the persons who had assaulted the deceased and had caused his death.

13. The argument of the learned APP that the discovery panchamas prepared under S.27 of the Evidence Act connect the respondents with the commission of crime in question, is also devoid of any substance. The learned Sessions Judge has, in his reasoned judgment, assigned cogent reasons for not relying on the discovery panchamas, as they were contrary to the provision of S. 27 of the Evidence Act. Furthermore, weapons which were discovered at the instance of the respondents were found from an open place which was accessible to public. Therefore, we do not find any substance in any of the submissions made by the learned APP, and accordingly, the impugned judgment and order passed by the learned Sessions Judge does not call for interference in this acquittal appeal.

14 This is an acquittal appeal in which court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge who had opportunity to observe the demeanour of the witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the reasons for acquittal given by the trial Court, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) GIRIJA NANDINI DEVI & ORS. vs. BIJENDRA NARAIN CHAUDHARY, AIR 1967 SC 1124, and (2) STATE OF KARNATAKA vs. HEMA REDDY AND ANOTHER, AIR 1981 SC 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the accused. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the accused and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge.

15. For the foregoing reasons, we do not see any merits in the appeal, and the appeal is liable to be dismissed. The appeal therefore, fails and is dismissed. Muddamal articles are ordered to be disposed of in terms of the directions given by the learned trial Judge in the impugned judgment.

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